

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

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Refer Reply To:

CC:CORP:B05

PLR-136390-11

Date:

January 13, 2012

Legend

Parent =

Company =

Sub 1 =

Sub 2 =

Sub 3 =

Purchaser =

State A =

State B =

State C =

Business 1 =

Business 2 =

Business 3 =

Date 1 =

Date 2 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated August 30, 2011, submitted on behalf of Parent by its authorized representatives, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file elections under §§ 1.1502-36(d)(6) and 1.1502-36(e)(5) ("Elections"). More specifically, Parent is requesting an extension of time to file "Section 1.1502-36 Statements" for Company, Sub 1, Sub 2 and Sub 3 in order to reduce the potential for loss duplication and thereby reduce or avoid attribute reduction. The material information submitted is summarized below.

At the time of the Transfer (as defined below), Parent (a State A corporation) was the common parent of an affiliated group of corporations that filed a life/non-life federal consolidated income tax return (the "Parent Group") and that was engaged in Businesses 1, 2 and 3. Parent owned all of the stock of Company (also a State A corporation) and Company owned 100% of the stock of Sub 1 (a State B corporation) and Sub 2 (a State A corporation), and Sub 2 owned all of the stock of Sub 3 (a State A corporation). Sub 1 and Sub 2 were insurance companies subject to taxation under § 801.

On Date 1, Parent sold all of the stock of Company to Purchaser, a State C limited liability company (the "Transfer"). The Transfer resulted in a capital loss to Parent that was subject to § 1.1502-36. On Date 2, Parent dissolved. Company is designated to act as substitute agent for the Parent Group for all taxable years ending on or before Date 2.

Company, as substitute agent for the Parent Group, failed to make timely Elections with respect to Company and its subsidiaries.

After the due date for the Elections had passed, Company discovered that it had failed to make valid Elections with respect to Company and its subsidiaries. Subsequently,

this request was submitted, under §§ 301.9100-1 and 301.9100-3, for an extension of time to file Elections to reduce the basis in Company and its subsidiaries. The period of limitations on assessment under § 6501(a) has not expired for the Parent Group's taxable year for which the Elections should have been filed or for any taxable year that would be affected by the Elections had they been timely filed.

Section 1.1502-36 provides rules for adjusting consolidated group members' bases in subsidiary ("S") stock and for reducing S's attributes when a member ("M") transfers a loss share of S stock. If § 1.1502-36 applies, § 1.1502-36(b) may redetermine members' bases in their shares of S stock; if the transferred share is still a loss share thereafter, § 1.1502-36(c) may reduce M's basis in the transferred loss share; and if the transferred share is still a loss share thereafter, § 1.1502-36(d) may reduce attributes of S and any subsidiaries that are lower-tier to S. These rules apply, and any required adjustments are given effect, immediately before the transfer. Section 1.1502-36(a).

Section 1.1502-36(f)(7) defines a "loss share" as a share of stock with a basis that exceeds its value.

Section 1.1502-36(f)(10)(i) states that, except as otherwise provided in § 1.1502-36(f)(10)(ii) (which contains exceptions not relevant here), M transfers a share of S stock on the earliest of certain dates, including the date that M and S cease to be members of the same group and the date that a nonmember acquires the share from M.

Notwithstanding the general attribute reduction rules of § 1.1502-36(d), the parent of a consolidated group ("P") may elect to reduce the potential for loss duplication, and thereby may reduce or avoid attribute reduction. Section 1.1502-36(d)(6)(i). To the extent of S's attribute reduction amount, P may elect (A) to reduce all or any portion of members' bases in transferred loss shares of S stock, (B) to reattribute all or any portion of certain S attributes to the extent they would otherwise be subject to reduction under § 1.1502-36(d), or (C) any combination thereof. If shares of stock of more than one subsidiary are transferred in the transaction and elections to reduce loss duplication under § 1.1502-36(d)(6) are made with respect to transfers of stock of subsidiaries in multiple tiers, effect is given to the elections from the lowest tier to the highest tier. The effect of any stock basis reduction or reattribution of losses immediately tiers up under § 1.1502-32 to adjust members' bases in higher-tier shares. Section 1.1502-36(d)(6)(iii)(B).

Section 1.1502-36(e)(5), which sets forth the time and manner for making an election to reduce loss duplication under § 1.1502-36(d)(6), provides that such an election is irrevocable and shall be made in the form of a statement titled "Section 1.1502-36 Statement." The statement must be included on or with the group's timely filed return for the taxable year of the transfer of S stock to which the election relates (or, in the case of an intercompany transfer, the year in which the intercompany item from the transfer is taken into account).

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section § 301.9100-1(b) defines the term “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register or by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Elections is fixed by the regulations (i.e., § 1.1502-36(e)(5)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Company to file Elections with respect to Company, Sub 1, Sub 2 and Sub 3, provided Company acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted on by Company, as substitute agent for the Parent Group, by Company Official, and by Tax Professional explain the circumstances that resulted in the failure to timely file valid Elections for Company, Sub 1, Sub 2 and Sub 3. The information establishes that Company reasonably relied on a qualified tax professional who failed to make, or advise Company to make, the Elections, and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the information, affidavits, and representations submitted, we conclude that Company has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Company, as the substitute agent of the Parent Group, to file Elections for Company, Sub 1, Sub 2 and Sub 3.

The above extension of time is conditioned on the tax liability (if any) of the Parent Group and the former members of the Parent Group being not lower, in the aggregate, for all years to which the Elections apply and all subsequent years, than it would have been if the Elections had been timely made (taking into account the time value of money). No opinion is expressed as to the tax liability for the years involved. A

determination thereof will be made by the Director's office upon audit of the federal income tax returns involved. Further, no opinion is expressed as to the federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether Company qualifies substantively to make the Elections on behalf of the Parent Group. In addition, we express no opinion as to the tax effects or consequences of filing the Elections late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Elections late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Company, Company Official, and Tax Professional under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Elections, any penalties and interest that would otherwise be applicable still apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Isaac W. Zimbalist
Isaac W. Zimbalist
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: